

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**UNITED STATES OF AMERICA,**

**v.**

**DWAYNE BRIGHAM, #46056-177  
Defendant.**

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**3:12-CR-175-O-33**

**ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made Findings, Conclusions, and a Recommendation in this case. No objections were filed. The District Court reviewed the proposed Findings, Conclusions, and Recommendation for plain error. Finding none, the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate.

IT IS THEREFORE ORDERED that Defendant's motions for transcripts and for leave to proceed *in forma pauperis* are **DENIED** and that his motion for clarification of sentence, construed as a habeas corpus petition under 28 U.S.C. § 2241, is **DISMISSED without prejudice** for lack of jurisdiction.

The Clerk of the Court is **directed** to open for statistical purposes a new habeas corpus case under [28 U.S.C. § 2241](#) (nature of suit 530 directly assigned to the same District and Magistrate Judge) on the basis of Defendant's letter motion for clarification of sentence.

The Court prospectively **CERTIFIES** that any appeal of this action would not be taken in good faith. See [28 U.S.C. § 1915\(a\)\(3\)](#); [FED. R. APP. P. 24\(a\)\(3\)](#). In support of this certification, the Court adopts and incorporates by reference the Magistrate Judge's Findings, Conclusions, and Recommendation. See [Baugh v. Taylor, 117 F.3d 197, 202](#) and n.21 (5th Cir. 1997). Based on the Findings and Recommendation, the Court finds that any appeal of this

action would present no legal point of arguable merit and would, therefore, be frivolous.

[Howard v. King](#), 707 F.2d 215, 220 (5th Cir. 1983).<sup>1</sup> In the event of an appeal, Plaintiff may challenge this certification by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of the Court, U.S. Court of Appeals for the Fifth Circuit. See [Baugh](#), 117 F.3d at 202; [FED. R. APP. P. 24\(a\)\(5\)](#).

SO ORDERED this 1<sup>st</sup> day of December, 2014.

  
Reed O'Connor  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> [Federal Rule of Appellate Procedure 4\(a\)](#) governs the time to appeal an order. A timely notice of appeal must be filed even if the district court certifies an appeal as not taken in good faith.